

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, April 12, 2006, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Walter Tarmann
Ray Dwyer

BOARD MEMBERS ABSENT: Paul Schultz
Walter Schmidt

SECRETARY TO THE BOARD: Peggy S. Pelikan

OTHERS PRESENT: Joe Green, BA06:017, petitioner
Gerald Green, BA06:017, owner
James Nelson, BA06:022, petitioner
Pete Feichtmeier, BA06:025, petitioner
Paula Johnson, BA06:024, owner
Duane and Suzanne Berghauer, BA06:006, petitioners
Hans Meyer, BA06:023 and BA06:025, neighbor
Greg Bloch, BA06:022, neighbor
Larry Frahm, BA06:024 and BA06:018, Bauer Sign Company
John and Carolyn Geason, BA06:022, owners
Lisa Cunningham, BA06:023, representing petitioner
John Becker, BA06:006, attorney for petitioners

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Bartholomew *I make a motion to approve the Summary of the Meeting of March 22, 2006, with the following amendment to the motion made by Mr. Dwyer in the case of BA06:007 Ronald Gasser.*

Condition #1 shall be amended as follows: The sign located in the NE portion of the property must meet all setback and offset requirements. The "middle" sign on C.T.H. ES must be located a minimum of two (2) ft. from the base setback lines. The sign located in the SW portion of the property near I-43 is not approved herein as the request for this sign was withdrawn by the petitioner.

The motion was seconded by Mr. Tarmann and carried unanimously.

NEW BUSINESS:

BA06:018 SHELDON KNOLL LLC
Bauer Sign Co. – Petitioner

Mr. Dwyer *I move to adjourn the public hearing until May 10, 2006 pending submittal of revised plans.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was to adjourn the public hearing until May 10, 2006.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

On March 22, 2006, the Waukesha County Board of Adjustment held this hearing in abeyance until April 12, 2006 so the petitioners could submit further information regarding a Master Sign Plan on the above-referenced property. No information has been submitted. The petitioner has requested that the hearing be postponed until May 10, 2006 (see attached). Therefore, Waukesha County staff recommends that the Board adjourn the public hearing until May 10, 2006 pending submittal of the Master Sign Plan.

BA06:017 JOSEPH GREEN

Mr. Dwyer

I move to deny the request in accordance with the staff's recommendation, for the reasons set forth in the Staff Report with the following addition to the reasons:

It is felt by the Board that the hot tub could be placed on the deck. If structural improvements to the deck are required, they may be allowed as long as the size and location of the existing deck are not modified.

The motion was seconded by Mr. Tarmann and carried unanimously.

The staff's recommendation was for denial.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The petitioner can use the property for a permitted use without the hot tub. It should be noted, however, that since the existing deck has been approved by the Board of Adjustment, the staff has determined that the petitioner would be able to retain the hot tub if it were relocated on to the existing deck. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The approval of this request would not be in conformance with the purpose and intent of the Ordinance. It should be noted that the hot tub will be required to be removed or relocated by June 1, 2006, unless authorized to remain by the granting of the necessary variances.

BA06:022 NELSON REMODELING

John Geason – Owner

Mr. Bartholomew

I make a motion to approve the request in accordance with the staff's recommendation, as stated in the Staff Report, with the conditions recommended in the Staff Report.

The motion was seconded by Mr. Dwyer and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The proposed additions must be located no closer to the side lot lines than the existing residence as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the additions must be located so that the outer edges of the overhangs conform with the offset requirements.
2. Any proposed decks or patios must be a minimum of 6 ft. from the northeast lot line and must be no closer to

the southwest lot line that the existing residence.

3. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed additions, decking and any other appurtenances, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
4. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed additions, decking, etc. does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition No. 3.
5. A detailed cost estimate must be submitted to the Planning and Zoning Division staff, prior to the issuance of a zoning permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The existing residence, patio, and decking are located approximately 140 ft. from the 100-year floodplain and are located in line with the neighboring residences. The property is pie-shaped with the wider portion of the property near the road. To require the residence to be moved back towards the wider part of the property and towards the road would greatly reduce the value of the property. The proposed additions will not be located any closer to the side lot lines that the existing residence. The approval of this request will result in additions and remodeling of the existing residence that will bring it up to date and be in keeping with the character of the neighborhood. The approval of this request would not be contrary to the public interest and therefore would be in conformance with the purpose and intent of the Ordinance.

BA06:023 TIM WALL

Mr. Dwyer

I move to deny the request in accordance with the staff's recommendation, for the reasons set forth in the Staff Report, with the following addition to the reasons:

The petitioner can comply with the Ordinance requirements for retaining walls without the need for variances.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for denial.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

According to the Land Resources Division the area could be regraded and stabilized without the need for the retaining walls. According to the Waukesha County Shoreland and Floodland Protection Ordinance the petitioner would be allowed to have one retaining wall less than 18 inches in height or a series of retaining walls as long as their total height does not exceed a total of 24 inches. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Therefore, the approval of this request would not be in conformance with the

purpose and intent of the Ordinance.

Mr. Bartholomew *I make a motion to deliberate on the cases out of order and to move ahead to case no. BA06:025.*

The motion was seconded by Mr. Ward and carried unanimously.

BA06:025 PETE FEICHTMEIER

Mr. Ward *I make a motion to approve the request in accordance with the staff's recommendation, as stated in the Staff Report, with the conditions recommended in the Staff Report with the following addition to the reasons:*

It should be noted that Condition No. 4 may be satisfied. This is subject to Staff approval.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The proposed addition must meet all applicable offset and setback requirements of the Ordinance, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset and setback requirements.
2. The proposed living area above the attached garage may not include a kitchen and shall not constitute the creation of a second living unit. The residence shall not be used as a multiple-family residence nor shall any part of the house be used as an in-law suite without obtaining Conditional Use Approval and all necessary permits from the Town of Oconomowoc and the Waukesha County Department of Parks and Land Use.
3. Only one set of utilities is permitted on this property to ensure that a second living unit is not created.
4. In order to ensure the construction of the addition does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, as conditioned, will allow the petitioners to remodel and construct a large addition to the existing residence on the property. The residence is a very substantial structure and is only non-conforming due to two corners of the house being located too close to the property lines. The proposed addition will meet all applicable offset and setback requirements of the Ordinance. The approval of this request would not be contrary to the public interest and would be in conformance with the purpose and intent of the Ordinance.

BA06:024 ALLYN WASLEY

Mr. Tarmann *I make a motion to approve the request in accordance with the staff's recommendation, as stated in the Staff Report, with the conditions recommended in the Staff Report.*

Discussion ensued and Mr. Tarmann amended his motion as follows:

I make a motion to approve the request in accordance with the staff's recommendation, as stated in the Staff Report, with the conditions recommended in the Staff Report, with the following change to Condition No.1:

Condition No. 1 shall read as follows: The proposed illuminated sign, including the marquee portion of the sign, shall not exceed 40 sq. ft. in size and shall adhere to the sign height requirements of the Ordinance. The bottom of the sign face must be a minimum of 4 ft. above the elevation of the ground.

The motion was seconded by Mr. Dwyer and failed with two yes votes and two no votes. Mr. Bartholomew and Mr. Ward voted no. A discussion ensued.

Mr. Dwyer

I make a motion to approve the request in accordance with the staff's recommendation, as stated in the Staff Report, with the conditions recommended in the Staff Report, with the following addition to Condition No. 1:

Condition No. 1 shall read as follows: The proposed illuminated sign, including the marquee portion of the sign, shall not exceed 40 sq. ft. in size and shall adhere to the sign height requirements of the Ordinance. The bottom of the sign face must be a minimum of 6 ft. above the elevation of the ground.

The motion was seconded by Mr. Tarmann and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The proposed illuminated sign, including the marquee portion of the sign, shall not exceed 40 sq. ft. in size and shall adhere to the sign height requirements of the Ordinance.
2. The new sign (face and pole) must be relocated outside of the vision corner of Road "P" and Wisconsin Ave.
3. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed sign, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
4. Prior to the issuance of a Zoning Permit for the sign, a Site Plan/Plan of Operation must be approved by both the Town of Oconomowoc Plan Commission and the Waukesha County Department of Parks and Land Use.
5. No additional signage, temporary or permanent, free-standing or wall-mounted, are allowed on the property unless specifically authorized by the Town of Oconomowoc Plan Commission, the Waukesha County Department of Parks and Land Use and, if necessary, the Waukesha County Board of Adjustment.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The existing sign is old and is in need of repair, is located within the vision corner of Road "P" and Wisconsin Ave. and may pose a safety hazard to the heavily traveled roads. The approval of this request, as conditioned, will allow the petitioners to construct a new sign that will be located outside of the vision corner of Road "P" and Wisconsin Ave. The tavern/restaurant building is set back off of the road and is difficult to see when you are traveling west on Wisconsin Ave.; therefore a freestanding sign is important for the operation of the tavern/restaurant. The approval of this request, as conditioned, would be in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA06:006 DUANE & SUZANNE BERGHAUER

Mr. Dwyer *I make a motion to reconsider Condition No. 4 of the Board's February 22, 2006, decision regarding the Berghauer's request for variances on the basis that additional information has come to light regarding the lot size of the Berghauer's property.*

The motion was seconded by Mr. Bartholomew and carried unanimously. Discussion ensued after the decision was made to reconsider.

Mr. Tarmann *I make a to amend Condition No. 4 of the Board's February 22, 2006, decision regarding the Berghauer's request for variances in accordance with the staff recommendation as stated in the Staff Memorandum and for the reasons stated in the Staff Memorandum.*

The motion was seconded by Mr. Dwyer and carried unanimously.

The staff's recommendation was that Condition No. 4 of the Board's February 22, 2006, decision be modified to read as follows:

Condition No. 4: The footprint of the residence and attached garage shall not exceed 1,300 sq. ft. The attached garage shall be a minimum of 400 sq. ft. in size and the first floor of the residence shall be a minimum of 850 sq. ft. in size. The proposed residence must be reduced in size so that the total floor area, including the first and second floors (not including the basement level), attached garage, any covered decks, covered patios, and/or covered porches, and the attached garage do not exceed 2,040 sq. ft. This will result in a floor area ratio of approximately 24.2% of the recalculated lot size of 8,429.16 sq. ft.

The reasons for the recommendation, as stated in the Staff Memorandum, are as follows:

It should be noted that this was the scenario discussed with and recommended by the Planning and Zoning Division and not the full second story proposed by the petitioner. Since the petitioner has a one-third interest in the common parcel, it is reasonable to include that portion of the parcel when calculating the total allowable floor area for a new residence. The revision to the conditions will allow this. The revisions to the Board's decision would be in conformance with the purpose and intent of the Ordinance.

ADJOURNMENT:

Mr. Bartholomew *I make a motion to adjourn this meeting at 9:35 p.m.*

The motion was seconded by Mr. Dwyer and carried unanimously.

Respectfully submitted,

Peggy S. Pelikan
Secretary, Board of Adjustment